[B-106378]

Departments and Establishments—Services Between—Reimbursement Accounting, Etc., Procedure

Collections representing reimbursements for salaries of National Labor Relations Board employees loaned to other agencies pursuant to the act of June 30, 1932, are available for obligation and expenditure for personal services of the Board and should be credited to the account administratively established to record such expenditures; however, the limitation on personal services contained in the Board's 1952 appropriation applies only to expenditures for personal services of the Board, which are the gross expenditures less salary reimbursements.

Comptroller General Warren to the Chairman, National Labor Relations Board, November 21, 1951:

Reference is made to your letter of October 31, 1951, requesting a decision with respect to the accounting for funds received or which may be received by the National Labor Relations Board from agencies borrowing your employees under reimbursable agreements, and with respect to the availability of such funds to the Board for personal service obligations.

The request for decision apparently arises by virtue of the limitation placed for the first time by the Congress on the amount of the Board's appropriation to be available for personal services. The National Labor Relations Board Appropriation Act, 1952, Public Law 134, approved August 31, 1951, 65 Stat. 221, provides that of the amount of $8,233,959, appropriated for the fiscal year 1952, "not more than $6,622,284 shall be available for personal services."

In explanation of the matter you state:

> If it is necessary to identify such collections as "Appropriation Reimbursements", as defined in Section 21 of Budget-Treasury Regulation No. 1, September 1950, it would be required that reapportionment of the appropriation be requested in order to include the collections, and it would then appear that the limitation of funds for personal services had been exceeded.
>
> If we adopt the accounting procedure of identifying such collections as a repayment and cancellation of the salary paid, our expenditure for personal services would be reduced by the amount of the collections. However, Budget-Treasury Regulation No. 1 contains no definition covering repayment under these conditions although the Regulation does contain a definition of "Appropriation Refund" which would accomplish the same result.
>
> The Board is reluctant to authorize reimbursable details if the funds collected must be identified as "Appropriation Reimbursements" and as such, would be reapportioned and constitute an excess above the maximum amount made available by Congress for personal services.

While it is true, as indicated above, that under Budget-Treasury Regulation No. 1, September 1950, reimbursements of the type here under consideration fall within the category "appropriation reimbursements," with the consequent requirement of reapportionment of the appropriation, it does not necessarily follow that the statutory limitation placed on the amount to be expended for personal services would be exceeded. Such limitation properly may be viewed as the limitation placed upon the amount available for the personal services of the Board itself.

The statutory authority whereby one agency of the Government may lend the services of its personnel to another agency is contained in section 601 of the act of June 30, 1932, as amended, 31 U. S. C. 686. That section contemplates the performance of services or the furnishing of supplies, etc. as the requisitioned agency may be in a position to supply or equipped to render on a reimbursable basis and, consequently, agreements entered into in accordance therewith do not serve to increase or decrease the appropriation of the requisitioned agency insofar as concerns the availability of the appropriation for the specific activities of such agency. A-99125, November 21, 1938.

The proper accounting for the collections of the nature here in question contemplates a credit to the limitation account administratively established to record and control expenditures for personal services. Such collections thereupon are available to the Board for obligation and expenditure for personal services, and while the crediting of such collections to the limitation account would appear to increase it, the limitation may be considered as applicable with respect to expenditures for personal services of the Board—as distinguished from expenditures for and on account of other agencies—only in the amount of net expenditures, that is to say, the gross expenditures chargeable thereto, less the amounts received in reimbursement for expenditures for personal services from other agencies. See 18 Comp. Gen. 958, 962.

The question posed is answered accordingly.

[B-106516]

Compensation—Retroactive Salary Increases—Unclassified Positions—Central Intelligence Agency

The extraordinary powers conferred upon the Central Intelligence Agency by section 10 of the Central Intelligence Agency Act of 1949, to carry out its functions do not include authority for payment to the Agency's employees—not subject to the Classification Act of 1949, as amended—of retroactive increases in compensation equivalent to those authorized by the Classification Act to be paid to employees occupying positions subject to the act.

Comptroller General Warren to the Director, Central Intelligence Agency, November 21, 1951:

Reference is made to your letter of November 13, 1951, requesting an opinion as to whether there is any legal objection to the payment, pursuant to authority conferred by section 10, Central Intelligence Agency Act of 1949, 63 Stat. 208, to employees of the Central Intelli-

gence Agency of retroactive increases in compensation equivalent to those authorized by Public Law 201, approved October 28, 1951, 65 Stat. 612, to be paid to employees under the Classification Act of 1949, 63 Stat. 954.

Your letter outlines the history of that part of the Central Intelligence Agency Act of 1949 which resulted in the conclusion by the Congress that employees of the said Agency should not be subject to the classification act. Also, it points out that, notwithstanding the freedom of action granted the Agency in that regard, an administrative policy of adherence to the provisions of the classification act was adopted shortly after the above-cited legislation became law.

Careful consideration has been given those matters, and the discussion thereof, but they seem to be no different basically than the matters discussed in decisions B–106332, B–106449, and B–106525, dated November 6, 15 and 20, 1951, respectively, wherein it was concluded, for reasons stated therein, that retroactive increases to the personnel involved were not authorized. Here, as there, the undisputed and controlling facts are that the employees are not subject to the classification act, as amended, are not included in Public Law 201, expressly or by necessary implication, and there is no specific statutory authority for granting them retroactive salary increases. To those facts there must be applied the long-established and recognized rule that retroactive salary increases may be granted only by express authority of the Congress and may not otherwise be granted administratively.

However, notwithstanding established law with reference to retroactive increases, you urge that you are authorized to pay such increases to the Agency's employees by resort to the power conferred by section 10 of the Central Intelligence Agency Act of 1949, 63 Stat. 212, which reads in part, as follows:

SEC. 10. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed * * *

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds * * *.

The extraordinary powers granted to the Central Intelligence Agency by section 10 and other sections of the 1949 act—and this I am sure you will agree—result solely from the congressional recognition of the extraordinary functions assigned that Agency by the act.

This Office recognized that fact when the bill which became the Central Intelligence Agency Act of 1949 was pending before the Congress and for that reason did not object to the grant of what must be conceded as unusual authority. But I feel certain it was not contemplated by the sponsors of the bill or by the Congress that this broad authority would be resorted to, or that it even contemplated a disregard of any control with respect to the normal administrative or operating problems which confront the ordinary Government agency. On the contrary the act itself specifically and in considerable detail delineates the increased authority of your Agency in those matters. To adopt the view suggested in your letter would be equivalent to concluding that your Agency is authorized to grant retroactive increases, bonuses, or other perquisites to any or all of its employees with such frequency, or at such times, as desired, contingent only on the availability of funds. I cannot attribute any such intention to the Congress.

Under the circumstances, it must be held that the proposed retroactive increases by the Central Intelligence Agency are not "necessary to carry out its functions" within the meaning of the said section 10 and therefore, would be subject to legal objection.

[B–101546]

Pay—Drill—National Guard—Waiver of Maximum Drill Limitation

Inasmuch as a statutory regulation made pursuant to, or in execution of, a statute cannot be changed by a waiver or exception thereto, the Chief, National Guard Bureau, is without authority to authorize drills to be held by a particular unit of the National Guard in excess of the maximum number of drills prescribed in National Guard regulations issued by direction of the Secretary of War pursuant to the authority contained in the National Defense Act of June 3, 1916, as amended.

Comptroller General Warren to Colonel J. E. Allen, Department of the Army, November 28, 1951:

By first indorsement dated February 21, 1951, the Acting Chief of Finance forwarded to this Office your letter of January 19, 1951, with enclosures, requesting review of the audit action in withholding credit in the accounts of Colonel W. C. Steiger, F. C., for amounts paid to officers and enlisted men of Company A, 110th Infantry, Pennsylvania National Guard, on vouchers Nos. 45599 and 122852, June 1948 and May 1949 accounts, respectively, of Colonel Steiger.

It appears from the records on file in this Office that the said organization was federally recognized on December 15, 1947, and that from that date to February 29, 1948, it held 20 assemblies for drill purposes; 8 each in March, April and May, and 4 in June, 1948, a total of 48; and that notices of exception were stated against the aforesaid vouchers covering payments for attendance at assemblies for drill in excess of 29, the maximum number authorized for the organization for